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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

ADAM SHAW, PETER GOLIGHTLY,  
JUSTIN TURNER and JOSHUA  
STANSFIELD as individuals and on behalf  
of all others similarly situated and the  
general public,

Plaintiffs,

v.

WIZARDS OF THE COAST, LLC,

Defendant.

Case No.: 5:16-cv-01924-EJD  
Hon. Edward J. Davila

**COLLECTIVE AND CLASS ACTION**

**PLAINTIFFS' NOTICE OF MOTION AND  
MOTION FOR CONDITIONAL  
CERTIFICATION AND TO FACILITATE  
NOTICE UNDER 29 U.S.C. § 216(b);  
MEMORANDUM OF POINTS AND  
AUTHORITIES**

Date: November 9, 2017  
Time: 9:00 a.m.  
Courtroom: 4

**TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

**NOTICE IS HEREBY GIVEN** that on November 9, 2017 at 9:00 a.m. in Courtroom 4 before the Hon. Judge Edward J. Davila of the United States District Court, Northern District of California, San Jose Courthouse, 5th Floor, 280 South 1st Street, San Jose, CA 95113, Plaintiffs Adam Shaw, Justin Turner, Peter Golightly and Joshua Stansfield (“Plaintiffs”) will move the Court as follows:

1. For an order conditionally certifying this case as a collective action on behalf of all individuals who participated as Magic: the Gathering judges at events sanctioned by Wizards of the Coast, LLC from April 12, 2013, through the resolution of this case;

2. Authorizing the parties to send notices pursuant to 28 U.S.C. Section 216(b) to all potential opt-in plaintiffs that they may join this action and assert claims under the Fair Labor Standards Act, 29 U.S.C. section 206;

3. Approving Plaintiffs’ proposed Notice of Collective Action Lawsuit and Consent to Join forms;

4. Ordering Defendant to Produce a Putative Collective Action Member List setting forth the last known addresses, telephone numbers, email addresses, dates of training, and partial social security numbers of all putative collective action members within fourteen (14) days this Court grants Plaintiffs’ Motion for Conditional Certification, if this Court is inclined to do so;

5. Approving the designation of Kurtzman Carson Consultants (“KCC”) as the Class Administrator responsible for, among other things, distributing the Notice of Collective Action Lawsuit and processing the returned Consent to Join forms on behalf of the collective, and authorizing electronic signatures on the Consent to Join form by potential opt-in plaintiffs.

This Section 216(b) Motion is based on this notice of motion, the following supporting authority and arguments, the Declaration of Adam Shaw in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Shaw Decl.”), the Declaration of Justin Turner in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Turner Decl.”), the Declaration of Peter Golightly in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Golightly Decl.”), the Declaration of Joshua Stansfield in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Stansfield Decl.”), the Declaration of Brad Rutherford in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Rutherford Decl.”), and the Declaration of Tyler

1 Morrison in Support of Plaintiffs' Motion for Conditional Certification and to Facilitate Notice Under  
2 29 U.S.C. § 216(b) ("Morrison Decl.").

3 Accompanying this motion are also: (1) Plaintiffs' Proposed Notice of Collective Action  
4 Lawsuit; and (2) Plaintiffs' Proposed Opt-in Consent Form, attached to the Declaration of Ross  
5 Cornell in Support of Plaintiffs' Motion for Conditional Certification and to Facilitate Notice Under 29  
6 U.S.C. § 216(b) ("Cornell Decl.") as Exhibits S and T, respectively, and Plaintiffs' Proposed Order  
7 Granting Plaintiffs' Motion for Conditional Class Certification and to Facilitate Notice under 29  
8 U.S.C. § 216(b).

9 Dated: June 14, 2017

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14 and the Putative Classes

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## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. PRELIMINARY STATEMENT**

Plaintiffs Adam Shaw, Justin Turner, Joshua Stansfield, Peter Golightly, one hundred twenty-six (126) opt-in Plaintiffs and the putative collective (“Plaintiffs”) bring the instant wage and hour collective action litigation to recover unpaid minimum wages and overtime compensation pursuant to the Fair Labor Standards Act (“FLSA”), 29 U.S.C. §§ 206, 207 and 216(b), for work they performed as Judges on behalf of Wizards of the Coast, LLC (hereinafter as “Wizards,” or the “Defendant”).

Congress enacted the FLSA as a remedial measure “to protect all covered workers from substandard wages and oppressive working hours, labor conditions [that are] detrimental to the maintenance of the minimum standard of living necessary for the health, efficiency and general well-being of workers.” *Barrentine v. Arkansas-Best Freight Sys. Inc.*, 450 U.S. 728 739 (1981); 29 U.S.C. § 202(a). In light of this remedial purpose, the FLSA broadly defines “employ” as “to suffer or permit to work.” 29 U.S.C. 203(g). The “striking breadth” of this definition “stretches the meaning of ‘employee’ to cover some parties who might not qualify as such under a strict application of traditional agency law principles.” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326, 112 S. Ct. 1344 (1992) (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 728 (1947)).

Considering this broad definition, Plaintiffs allege that they and the Collective performed work as employees – thousands of hours of work that benefited the Defendant and without which the Defendant could not have conducted its highly profitable business – and that the Defendant misclassified members of the Collective as exempt from minimum wage and overtime requirements on a class-wide basis.

Section 216(b) of the FLSA provides a private cause of action against an employer “by any one or more employees for and in behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b). Unlike class actions under Rule 23, collective actions under the FLSA require putative class members to opt into the case. *See id.* (“No employee shall be a party plaintiff to any such action unless he gives his consent in writing to become such a party and such consent is filed in the court in which such action is brought.”) These opt-in employees are party plaintiffs, unlike absent class members in a Rule 23 class action. *See Wright, Miller, & Kane, Federal Practice and Procedure* Vol. 7B § 1807 at 474 n.13 (3d ed. 2005).

1 The three-year statute of limitations for an FLSA claim runs from the date a non-Named  
 2 Plaintiff “opts-in” to the action.<sup>1</sup> In light of the fact that the statute of limitations for an individual’s  
 3 FLSA claim continues to run even after a lawsuit is commenced, courts routinely endorse court-  
 4 authorized notice early in the litigation to notify individuals about their FLSA claims and ensure that  
 5 their rights do not expire during the discovery period. Plaintiffs make the instant application simply to  
 6 request court-authorized notice be published to the putative collective to notify them of the pendency  
 of this action and of their rights under the FLSA.

7 Accordingly, Plaintiffs seek an Order pursuant to 29 U.S.C. § 216(b), authorizing Plaintiffs to  
 8 send notice to the following similarly situated individuals:

9  
 10 All current and former judges who worked at Magic: the Gathering events sanctioned<sup>2</sup> by  
 11 Wizards of the Coast, LLC from April 12, 2013 through the present (the “Collective”).

## 12 **II. FACTUAL BACKGROUND**

### 13 **A. Plaintiffs And All Similarly Situated Magic Judges Perform Valuable** 14 **Work that Benefits Wizards**

15 Wizards is a private sector, for-profit enterprise that sells products relating to a collectible card  
 16 game called Magic: the Gathering (“Magic”). The Plaintiffs worked as unpaid Judges for Wizards,  
 17 overseeing its highly regulated system of tournaments, game nights and events relating to Magic.  
 18 Magic events are used by Wizards as a marketing tool to actively engage players in Magic and to  
 19 provide a means to sell Magic products. *See* Declaration of Justin Turner in Support of Plaintiffs’  
 20 Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Turner

21  
 22 <sup>1</sup> The FLSA differs from a Rule 23 class action, where class members’ claims run from the date the  
 lawsuit was filed.

23 <sup>2</sup> Wizards-sanctioned events fall into one of three Rules Enforcement Levels (“REL”): “Regular,”  
 24 “Competitive,” or “Professional.” The Rules Enforcement Level is “a means to communicate to the  
 25 players and judges what expectations they can have of the tournament in terms of rigidity of rules  
 26 enforcement, technically correct play, and procedures used ... [t]he Rules Enforcement Level of a  
 27 tournament generally reflects the prizes awarded and the distance a player may be expected to travel.”  
 28 Cornell Decl. Ex. G [PLF1045, 1088]. The class definitions set forth in Plaintiff’s First Amended  
 Complaint [ECF No. 33, 7:21-8:13] erroneously designated “Regular” REL as “Amateur” REL.  
 Plaintiffs have since filed a Joint Stipulation re Notice of Errata correcting that error [ECF Nos. 44,  
 45].

Decl.”) ¶ 6 [2:19-20]; Declaration of Brad Rutherford in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Rutherford Decl.”) ¶ 5 [1:17-20]; Declaration of Tyler Morrison in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Morrison Decl.”) ¶ 9 [2:18-21]; Declaration of Ross Cornell in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Cornell Decl.”) Ex. P [PLF1124] (“[p]layers who compete in DCI-sanctioned tournaments spend 43% more on Magic cards than non-tournament players”).<sup>3</sup> Wizards charges Judges with the responsibility of being the arbiters of Magic tournaments by ensuring that the game is played fairly and that players adhere to Wizard’s rules. *Id.*; Cornell Decl. Ex. B [PLF1007], Ex. E [PLF1031] (“A judge is someone who upholds [Wizards’] values and ... help run tournaments, deliver rulings ... Judges hold special positions of trust and authority within the community ... [they] enforce the rules, award penalties, and even disqualify players). Wizards analogizes Magic judges to “sports referees.” *Id.* Ex. C [PLF1021] (“[b]asically, the judge at a tournament is the person responsible for keeping the game fair (much like the referee in any other sport), applying the rules, correcting and penalizing any infractions, answering questions and assisting players in tournament matters”); Morrison Decl. ¶¶ 5, 10 [1:18-20; 3:1-15].

As Wizards concedes, the life of a judge means “getting into an interesting activity that’s both fun and a lot of work.” Cornell Decl. Ex. C [PLF1025]. Wizards further admits that being a Judge “demands dedication, commitment, and constantly keeping up with the new things that come with the evolution of the game,” “demands a professional attitude,” and is “a matter of responsibility.” *Id.* Ex. C [PLF1022]. Wizards’ website contains a link called “Find a Judge” where retail store operators who host Magic events (referred to in the Magic community as “Tournament Organizers”) can go to find a judge to work at sanctioned events in their stores. *Id.* Ex. D [PLF1026-1029], Ex. G [PLF1041-1043].

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<sup>3</sup> The “DCI” is the official sanctioning body for Magic competitive play. Cornell Decl. Ex. L [PLF1102]. Wizards issues “DCI numbers” that allow players, judges and tournament organizers to interact with Wizards’ electronic data systems. Cornell Decl. Ex. Q [PLF1143]. Wizards defines a “sanctioned” Magic event as: “[a]ny event that is scheduled by an authorized tournament organizer and whose results are properly reported to Wizards of the Coast.” Cornell Decl. Ex. A [PLF1001]. Wizards’ repeated reference to “sanctioned” events on its website underscores the significance of this distinction. Cornell Decl. Ex. K [PLF1101]. Wizards summarizes its rules for “sanctioned” events in its Tournament Rules. Cornell Decl. Ex. G [PLF1075-1077].

**B. Magic Judges Are Uniformly Subject to Wizards' Rigorous Training and Certification Requirements**

Wizards requires Magic judges obtain certification in order to run sanctioned Magic events. *Id.* Ex. J [PLF1096] (“[t]he core of the Judge Program, the level system, affects every judge”); Rutherford Decl. ¶ 6 [1:24-26]. The certification criteria, which is determined by Wizards, is uniformly applied to Magic judges for each respective judge level and ranges from requiring study of various Wizards policy documents and passing written exams to mentoring lower level Judges and serving as brand ambassadors for Wizards. Cornell Decl. Ex. J [PLF1096-1100]; Morrison Decl. ¶¶ 7, 14 [2:3-11, 4:20-22]; Rutherford Decl. ¶¶ 7, 11 [1:27-2:6, 3:16-18]. Wizards advises Judges to “study well and prepare yourself for the events in which you will work.” Cornell Decl. Ex. C [PLF1025].

The requirements for certification as a Magic judge are substantial. Becoming a level 1 Judge requires dozens of hours of study time, taking a written test which lasts several hours, judging at least two Magic events, spending hours being mentored by a higher level judge and at least one hour per week involved in non-judging activities with the goal of helping Wizards build the Magic community. Turner Decl. ¶ 13 [3:14-24]; Declaration of Adam Shaw in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Shaw Decl.”) ¶ 8 [2:23-3:6]; Declaration of Peter Golightly in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Golightly Decl.”) ¶ 12 [3:3-12]; Declaration of Joshua Stansfield in Support of Plaintiffs’ Motion for Conditional Certification and to Facilitate Notice Under 29 U.S.C. § 216(b) (“Stansfield Decl.”) ¶ 14 [3:21-4:3]; Morrison Decl. ¶ 6 [1:25-2:2]; Rutherford Decl. ¶ 7 [1:27-2:6].

Obtaining certification as a level 2 judge requires an even greater time commitment.<sup>4</sup> To become a level 2 judge, Wizards requires a candidate to pass comprehensive testing on over three hundred (300) pages of detailed written materials including Wizards’ Tournament Rules, Comprehensive Rules, and Infraction Policy Guide and to work enough events as a level 1 judge to obtain the approval and recommendation of other higher level judges. Turner Decl. ¶ 14 [3:24 - 4:2]; Shaw Decl. ¶ 9 [3:6 -11]; Golightly Decl. ¶ 13 [3:12-17]; Stansfield Decl. ¶ 15 [4:4 - 8]; Morrison Decl. ¶ 7 [2:3-11]; Rutherford Decl. ¶ 7 [2:4-6].

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<sup>4</sup> Level 2 judges are qualified to judge competitive Magic events and “are responsible for PPTQs and represent the bulk of judges on the floor of a Grand Prix and other large-scale tournaments.” Cornell Decl. Ex. J [PLF1099].

Once certified, Wizards requires all Judges to continuously maintain their certification. Cornell Decl. Ex. C [PLF1022], Ex. J [1096-1110]. Roughly every three months, Judges must study and understand Wizards-issued updates and changes to its gameplay rules and policies. Turner Decl. ¶ 15 [4:3-7] (it takes judges at least 10 hours each quarter to read, get trained on, and stay apprised of policy changes implemented by Wizards regarding Magic gameplay and judging); Stansfield Decl. ¶ 14 [3:18-22]; Shaw Decl. ¶ 10 [3:11-16]; Golightly Decl. ¶ 14 [3:17-22]; Morrison Decl. ¶ 8 [2:12-17]; Rutherford Decl. ¶ 8 [2:7-14]. Wizards maintains a database that tracks all of the events worked by judges. This database, called OPIS, tracks Magic judges at event, players at event, match records of players, penalties of the players, each round of each tournament, and disqualifications. Turner Decl. ¶ 18 [5:1-3]; Stansfield Decl. ¶ 19 [5:7-9]; Golightly Decl. ¶ 17 [4:16-18]; Shaw Decl. ¶ 14 [4:13-15]; Morrison Decl. ¶ 12 [3:24-27].

### C. Magic Judges Engage in Similar Job Duties and Responsibilities

Magic Judges working at sanctioned Magic events are the labor force that permits those events to function. Turner Decl. ¶ 17 [4:18-21] (Wizards could not conduct Magic events without hundreds of judges performing substantial labor); Stansfield Decl. ¶ 18 [4:24-27]; Shaw Decl. ¶ 13 [4:3-6]; Golightly Decl. ¶ 16 [4:5-6]; Rutherford Decl. ¶ 9 [2:15-3:3]; Morrison Decl. ¶ 10 [3:1-15]. These sanctioned events include Friday Night Magic, Prerelease Tournaments, Magic Game Day, Preliminary Pro Tour Qualifiers, Magic Grand Prix, Grand Prix, Nationals, Pro Tour, World Magic Cup, and World Championship, among others. Turner Decl. ¶ 17 [4:21-24]; Cornell Decl. Ex. G [PLF1088].

Judges carry out the vast majority of work activities at sanctioned Magic events by not only administering and overseeing the gameplay, but also handling numerous aspects of event logistics. At any Wizards sanctioned event, Judges engage in similar work duties, which include monitoring gameplay to ensure that it complies with Wizards' set rules, apply Wizards' policies to make decisions in resolving disputes between players, performing "deck checks" to ensure players' cards comply with Magic rules, and recording information about the outcome of gameplay and disputes into Wizards' tracking software. At larger sanctioned events, Judges have the added responsibilities of setting up and breaking down chairs and tables for players, collecting players' entry fees, posting information about matchups, picking up and taking out trash left by Magic players, cleaning up spills and other messes, and providing general customer service functions like answering questions and providing directions and instructions. Stansfield Decl. ¶ 17 [4:14-24]; Shaw Decl. ¶ 11 [3:17-26]; Golightly Decl. ¶ 15

1 [3:23-4:5]; Turner Decl. ¶ 16 [4:8-17]; Morrison Decl. ¶ 10 [3:1-15]; Rutherford Decl. ¶ 9 [2:15-3:2].

2 Wizards summarizes common judging activities at sanctioned events as follows:

3 “At all levels, judges will keep the game fair, answer rules questions from players at the  
4 tournament, correct infractions and apply penalties when necessary. Basically, this will  
5 represent most of the judging job, especially at small, local tournaments, where, usually, there  
6 is only one judge. Aside from rules matters and players disputes, judges perform some  
7 activities related to the tournament organization. Judges post pairings generated by the  
8 scorekeeper, check decks and deck lists, keep the tables organized and clearly numbered. They  
9 also lend a hand to the [Tournament Organizer] when necessary: making announcements,  
10 looking for missing players and finding unreported match results. After all, besides keeping it  
11 fair, we need to keep it organized.”

12 Cornell Decl. Ex. C. [PLF1023].

13 Judges who act as Team Leads have additional duties relating to the management of a team of  
14 three to six judges at Wizards’ larger events. *Id.* Ex. N [PLF1112]. These duties, as set forth by  
15 Wizards, include preparing for rule interactions and policy discussions, conducting team meetings at  
16 the start, end, and throughout the day of the tournament, assigning tasks to team members, and  
17 ensuring that team members receive proper lunch breaks while maintaining floor coverage. *Id.* Ex. N  
18 [PLF1112-1120]. “At large events with many players and many judges, a team structure is often used  
19 to split up the judge staff into small task forces, referred to as teams ... [w]hile the bulk of a team  
20 leader's job happens during the event, preparation is not unimportant.” *Id.* Team Leads are required,  
21 prior to a Magic event, to determine strengths and weaknesses of team members, team member  
22 schedules and duties, where to obtain necessary job materials and prepare for team meetings. *Id.*

#### 23 **D. Magic Judges Work Similar Shifts**

24 Wizards determines the schedules for Magic events. There are single-day and multiple-day  
25 Magic event formats. Turner Decl. ¶ 17 [4:19-21]; Golightly Decl. ¶ 16 [4:6-8]; Stansfield Decl. ¶ 18  
26 [4:25-27]; Shaw Decl. ¶ 13 [4:3-6]; Morrison Decl. ¶ 9 [2:18-27]. Single-day Magic events tend to  
27 involve fewer players and judges and are generally smaller events held at the local level. Cornell Decl.  
28 Ex. C [PLF1021]; Morrison Decl. ¶ 9 [2:18-27]. Multiple-day Magic events involve larger numbers of  
players and judges and tend to be held at larger venues, often in hotels or convention centers. Cornell  
Decl. Ex. R [PLF1152-1166]; Turner Decl. ¶ 17 [4:23-28]; Shaw Decl. ¶ 13 [4:8-12]; Golightly Decl. ¶  
16 [4:10-15]; Stansfield Decl. ¶ 18 [5:2-7]. There is an approximate 20:1 ratio of Magic players to  
Magic judges at Magic events. Turner Decl. ¶ 17 [4:26-28].

Because similar Magic events share similar schedules, Judges who work those events also have

1 similar schedules. At larger Magic events, such as the ProTour, Grand Prix, World Cup and World  
 2 Championships, Judges typically work two or three consecutive days with work shifts ranging from  
 3 eight to twelve hour days. At smaller events one-day events or evening events, such as Friday Night  
 4 Magic, Preliminary Pro Tour Qualifiers and Grand Prix Trials, Magic judges typically work six to ten  
 5 hours. Shaw Decl. ¶ 15 [4:16-24]; Golightly Decl. ¶ 18 [4:18-26]; Stansfield Decl. ¶ 20 [5:10-18];  
 6 Turner Decl. ¶ 19 [5:4-12]; Morrison Decl. ¶ 11 [3:16-23]; Rutherford Decl. ¶ 10 [3:3-11]. Judges’  
 7 work schedules at sanctioned Magic events is determined by Wizards, whose hiring and scheduling  
 8 decisions are implemented by head judges operating in accordance with Wizards’ policies and  
 9 procedures and under Wizards’ supervision. Shaw Decl. ¶ 16 [4:24-26]; Golightly Decl. ¶ 19 [4:27-  
 5:2]; Stansfield Decl. ¶ 21 [5:18-20]; Turner Decl. ¶ 20 [5:12-14]; Morrison Decl. ¶ 11 [3:16-18].

#### 10 **E. Magic Judges Are Subject to the Same Compensation and Expense** 11 **Reimbursement Policies**

12 Despite the long-standing requirement that employees must be paid for all hours worked under  
 13 the FLSA, Wizards has a uniform policy of refusing to pay employee wages to Judges for all the hours  
 14 they work related to Wizards sanctioned events. Instead, Wizards treats its Judges as “volunteers” who  
 15 it compensates, indirectly through its agents, with Magic products or giveaways of variable value.  
 16 Turner Decl. ¶ 30 [7:5-9]; Morrison Decl. ¶ 13 [4:1-15]; Rutherford Decl. ¶¶ 12, 13 [3:25-4:16].

17 For most of the class period, Wizards provided “Magic: the Gathering Tournament Support  
 18 Kits” (hereinafter “Support Kits”) to Tournament Organizers desiring to host Magic events. Cornell  
 19 Decl. Ex. O [PLF1122]. There are a variety of Support Kits for different kinds of Magic events, each  
 20 containing different combinations of product and support. Turner Decl. ¶ 28 [6:21-7:2]. All of the  
 21 materials provided in the Support Kits are produced by Wizards, including the prizes, which by way of  
 22 example for Friday Night Magic, consist of “two packs containing 16 exclusive premium [Magic]  
 23 cards.” Cornell Decl. Ex. O [PLF1122]; Turner Decl. ¶ 31 [7:9-11]. Wizards’ policy has been that for  
 24 each week the Tournament Organizer schedules a Magic event, Wizards will send the Tournament  
 Organizer foil, alternative-art promo cards in quantities determined by [the Tournament Organizer’s  
 store level. Cornell Decl. Ex. H [PLF1089].

25 Wizards’ policies state that product support is intended for distribution to Magic players.  
 26 Cornell Decl. Ex. H [PLF1091-1092] (“Distribute all promo cards you receive for each Friday,  
 27 regardless of the number of events you run. You may issue them for any reason, so long as all cards are  
 28 distributed to your players”). In reality, whether or not Wizards officially earmarks the prizes

1 contained in Support Kits for Magic players, Tournament Organizers rely on the Support Kits to  
 2 compensate Magic judges for their work as judges at sanctioned Magic events and regularly distribute  
 3 product support to judges for that purpose and judges, in turn, sell them on a secondary market to  
 4 attempt and recover their out of pocket expenses. Turner Decl. ¶¶ 29, 30 [7:2-9]; Shaw Decl. ¶ 28  
 5 [6:21-7:2]; Golightly Decl. ¶ 25 [6:1-11]; Stansfield Decl. ¶¶ 26 - 28 [6:17-7:3]; Rutherford Decl. ¶ 13  
 6 [4:1-16]; Morrison Decl. ¶ 13 [4:1-15]. For many Magic judges, receiving product from Tournament  
 7 Organizers has been the only compensation they receive, and Wizards always controlled the giveaways  
 8 relied on as compensation by judges. Turner Decl. ¶¶ 29, 30 [7:2-9]; Shaw Decl. ¶ 28 [6:21-7:2];  
 9 Golightly Decl. ¶ 25 [6:1-11]; Stansfield Decl. ¶¶ 26 - 28 [6:17-7:3]; Rutherford Decl. ¶ 13 [4:1-16];  
 10 Morrison Decl. ¶ 13 [4:1-15].

11 In agreeing to judge Magic events, Magic judges have generally known in advance exactly how  
 12 much product to expect as compensation because there is an open and ongoing conversation in the  
 13 judge community about minimum acceptable thresholds of product compensation. Rutherford Decl. ¶  
 14 13 [4:6-8]. Accordingly, the Wizards' practice is to subsidize the work performed by judges at  
 15 sanctioned Magic events with product support delivered to Tournament Organizers under the auspices  
 16 of "player prizes," amidst an environment where everyone involved knows and expects the product  
 17 support to be used to compensate judges. *Id.*; Turner Decl. ¶ 30 [7:5-9]. Shortly after this and another  
 18 lawsuit was filed, Wizards stopped distributing products as compensation for work performed at Magic  
 19 events. Rutherford Decl. ¶ 13 [4:13-16].

20 Magic Judges are and have been subject to the same Wizards compensation policies and  
 21 practices whereby they are not paid minimum wages or overtime wages for all of the work they  
 22 perform on behalf of Wizards. Shaw Decl. ¶ 24 [6:20-7:4]; Stansfield Decl. ¶ 22 [5:25-6:2]; Golightly  
 23 Decl. ¶ 26 [6:11-16]; Turner Decl. ¶ 22 [6:5-11]; Rutherford Decl. ¶ 12 [3:25-27]; Morrison Decl. ¶ 13  
 24 [4:1-5]. Wizards and its agents also uniformly failed to reimburse Judges for all work-related  
 25 expenses, such as food, travel, or hotel accommodations, incurred while working as a Judge. Shaw  
 26 Decl. ¶ 24 [6:20-22]; Golightly Decl. ¶ 28 [6:26-7:4]; Turner Decl. ¶¶ 25-26 [6:10-15]; Rutherford  
 27 Decl. ¶ 13 [4:10-13]; Morrison Decl. ¶ 13 [4:13-15]. Magic judges rely on Wizards' product  
 28 giveaways as their sole form of expense reimbursement. Turner Decl. ¶¶ 29, 30 [7:2-9]; Shaw Decl. ¶  
 21 [5:23-6:5]; Golightly Decl. ¶ 25 [6:1-11]; Stansfield Decl. ¶¶ 26 - 28 [6:17-7:3]; Rutherford Decl. ¶  
 13 [4:10-13]; Morrison Decl. ¶ 13 [4:13-15]. Thus, Plaintiffs and the putative opt-ins raise common  
 allegations that these compensation and reimbursement policies violate the FLSA, especially since for-  
 profit private sector employers, like Wizards, may not accept volunteer services from employees.

**F. Magic Judges Are Subject to Common Policies Regarding Conduct, Discipline and Uniforms**

Wizards publishes the Magic Judge Code, Wizards' version of the judge's code of conduct, which sets forth mandatory requirements for Judges including a description of the requisite values and principles of Judge conduct, examples of misconduct, and an explanation of forms of discipline. Cornell Decl. Ex. B [PLF1007] ("[t]his document helps judges understand their responsibilities. It's here to help define what is acceptable and what isn't"). The scope of Wizards' expectations regarding Judge conduct is broad: the Judge Code applies to Judges "[d]oing anything while wearing judge attire, [d]oing anything while representing themselves as a judge ... using a photo of themselves in a judge shirt as their icon on social media or bringing up their judge status in order to gain trust ... [c]ontributing to an official judge discussion website." *Id.* Ex. B [PLF1010-1011]; Rutherford Decl. ¶ 11 [3:16-24]; Morrison Decl. ¶ 15 [5:5-9]. Wizards further extends its expectations to "conduct by a judge who is at a Magic event in a non-judge role, a judge who is addressing an audience which is primarily focused on Magic, a judge who is or speaking as a person who is strongly associated with Magic and/or judging ... [p]laying or otherwise attending a Magic event in a non-judge capacity, [p]laying, trading, or interacting with others on Magic Online, [p]osting on an unofficial Magic site or Magic related social media ... and [a]ttending a social event organized alongside a Magic event." *Id.*

If Wizards determines that a Judge has violated its rules or procedures, Wizards maintains the right to discipline that Judge. Wizards implements sanctions against Judges in the form of suspensions, demotions and decertifications for things such as cheating, prematurely giving away information about to-be-released cards, poor performance reviews, and providing incorrect Judge foils or box sets to Magic players. Cornell Decl. Ex. B [PLF1019]; Turner Decl. ¶ 23 [6:1-5]; Golightly Decl. ¶ 23 [5:19-23]; Stansfield Decl. ¶ 25 [6:12-16]; Shaw Decl. ¶ 19 [5:12-17]; Rutherford Decl. ¶ 11 [3:17-24]; Morrison Decl. ¶ 15 [4:26-5:9]. The full scope of suspensions and decertifications executed against judges by Wizards will be determined in discovery, but even at this early stage Plaintiffs have evidence of at least two dozen judges who have been suspended or terminated by Wizards. Turner Decl. ¶ 32 [7:12-17]; Golightly Decl. ¶ 24 [5:23-28]; Shaw Decl. ¶ 20 [5:17-22].

Wizards also requires Judges to wear uniforms when judging Magic events. "To help maintain the professionalism and look of Magic events, all judging staff members have a distinctive uniform they wear while judging." Cornell Decl. Ex. M [PLF1110]. "The judge uniform and logo make an impression which connects the behavior of the judge using them to the Judge Program." *Id.* Ex. B [PLF1011]. Judges are instructed to wear the uniform, including shirts provided by Wizards, at

1 sanctioned events. Turner Decl. ¶ 21 [5:19-23]; Golightly Decl. ¶ 21 [5:10-15]; Stansfield Decl. ¶ 23  
 2 [6:3-8]; Shaw Decl. ¶ 17 [5:4-9]; Rutherford Decl. ¶ 11 [3:14-16]; Morrison Decl. ¶ 14 [4:22-25].

3  
 4 **G. Wizards Regards Magic Judges As Its Representatives To Magic Players**  
 5 **And Tournament Organizers**

6 In addition to their work at sanctioned Magic events, Judges work on behalf of Wizards as  
 7 representatives to retailers and players, providing them with customer service, instruction, and support.  
 8 Cornell Decl. Ex. F [PLF1035] (Magic judges are “the main envoys to the retail community”); Turner  
 9 Decl. ¶ 16 [4:16-18]; Shaw Decl. ¶ 11 [3:24-26]; Stansfield Decl. ¶ 17 [4:22-24]; Golightly Decl. ¶ 15  
 10 [4:3-5]; Rutherford Decl. ¶ 8 [2:12-14]; Morrison Decl. ¶ 8 [2:15-17]. Wizards states that “Magic  
 11 judges are perhaps best known as arbiters of tournament rules, but they are also passionate members of  
 12 the Magic community who endeavor to ensure that events are fair and players learn the game.”  
 13 Cornell Decl. Ex. E [PLF1031]. Wizards generalizes that “[o]verall, the basic goal of a judge is to  
 14 promote an environment that’s fair, balanced and pleasant to the players.” *Id.* Ex. C [PLF1021]. As  
 15 Wizards puts it, “even in small local tournaments [the Judge] may be working with other people, such  
 16 as the Tournament Organizer and the Scorekeeper.” *Id.*

17 Wizards acknowledges that Judges “act as a region’s points-of-contact and coordinator for the  
 18 judge program” and assist Tournament Organizers, who operate Magic events on behalf of Wizards  
 19 under Wizards direction, control and supervision,<sup>5</sup> in “finding judges for events, finding judging  
 20 opportunities, and offering store owners advice on best practices for running events.” Cornell Decl.  
 21 Ex. E [PLF1032]. As representatives of Wizards, “[t]he behavior of judges toward the Magic  
 22 community affects [Judges’] ability to act as trusted experts at events” because they “represent the  
 23 Judge Program and the Magic community.” *Id.* Ex. B [PLF1007, 1011]. Wizards encourages  
 24 Tournament Organizers to reach out to Judges for assistance hosting Magic events by advising  
 25 Tournament Organizers that Magic judges are their “connection to resources and players in your area”  
 26 and that Judges are their link to “a community player network usually with other stores, professional  
 27 organizers, and respected by the player community ... with a good relationship they’ll be able to help  
 28 you with future events or questions you may have.” *Id.* Ex. I [PLF1094]. Unsurprisingly, Wizards

<sup>5</sup> Cornell Decl. Ex. P [PLF1124-1142].

describes local level Magic events and the Judge’s critical role in organizing them in support of the Tournament Organizers as the “lifeblood of the game since the beginning.” *Id.* Ex. H [PLF1089].

### **H. One Hundred Twenty-Six Individuals Have Already Opted Into This Collective Action and Many More Are Expected to Join Once Notice Is Sent**

In addition, the four named Plaintiffs, one hundred twenty-six (126) opt-ins have filed valid consent to join forms to participate in this collective action. ECF Nos 8, 11, 20 and 22. Plaintiffs estimate that there are thousands of other potential opt-in Plaintiffs who stand to be notified pursuant to Plaintiffs’ request and would likely want to participate. Turner Decl. ¶ 17 [4:18-28]; Shaw Decl. ¶ 13 [4:3-13]; Golightly Decl. ¶ 16 [4:5-15]; Stansfield Decl. ¶ 18 [4:24-5:6]; Rutherford Decl. ¶ 9 [2:15-20].

## **III. ARGUMENT**

### **A. The FLSA Permits Collective Actions to Prohibit Unlawful Labor Practices**

The FLSA requires, among other things, that employers pay covered employees at least a specified minimum wage for work performed and overtime pay for hours worked in excess of forty hours per week. 29 U.S.C. §§ 202, 207.<sup>6</sup> The named Plaintiffs, and all other Judges working for Defendant, have been willfully and uniformly misclassified as volunteers and have thereby been denied minimum wage pay and overtime pay for hours worked in excess of forty per week.

In filing this motion, the named Plaintiffs refer this Court to the factual allegations set forth in the operative Complaint, as well as the declarations and exhibits submitted herewith and otherwise identified. While the named Plaintiffs have not yet conducted class-certification discovery, the current record is more than sufficient to establish the propriety of sending notice to the putative opt-in plaintiffs. *See, e.g., Banks v. Robinson*, No. 2:11-cv-00441, 2011 WL 3274049, at \*5 (D. Nev. July 28, 2011) (“At the first, or ‘notice stage,’ the court relies ‘primarily on the pleadings and any affidavits submitted by the parties,’ [to decide] ‘whether the potential class should be given notice of the action.’” (quoting *Leuthold v. Destination Am., Inc.*, 224 F.R.D. 462, 466 (N.D. Cal. 2004))).

Where, as here, an employee alleges that his employer has failed to comply with the wage and

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<sup>6</sup> *See also Bao Yi Yang v. Shanghai Gourmet, LLC*, 471 Fed. Appx. 784, 786 (9th Cir. 2012); *Solis v. Washington*, 656 F.3d 1079, 1083 (9th Cir. 2011).

hour mandates of the FLSA, it provides that “[a]n action to recover . . . may be maintained against any employer . . . by any one or more employees for and on behalf of himself or themselves and other employees similarly situated.” 29 U.S.C. § 216(b). The collective action authorized by the statute affords “plaintiffs the advantage of lower individual costs to vindicate rights by pooling their resources.” *Hoffman-LaRoche Inc. v. Sperling*, 493 U.S. 165, 170 (1989). Its purpose is to ensure the enforcement of a statute enacted by Congress to combat “labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general well-being” by federally regulating wages and hours. 29 U.S.C. § 202.

Under the FLSA, to file a collective action, the plaintiffs must be “similarly situated,” and they must opt-in to the lawsuit by filing a written consent with the court. 29 U.S.C. § 216(b).<sup>7</sup> It is imperative that analysis of the propriety of collective certification be guided by the broad remedial purposes of the FLSA at the forefront. *See Hoffmann-LaRoche, Inc.*, 493 U.S. at 173 (in authorizing court-facilitated notice to putative opt-in plaintiffs in a § 216 collective action, the Court observed that the “broad remedial goal of the statute should be enforced to the full extent of its terms”).<sup>8</sup>

#### **B. In Determining Whether Plaintiffs Are Similarly Situated, the Courts in the Ninth Circuit Utilize a Two-Step Approach.**

The FLSA does not define how similar the employees must be before they may proceed as a collective action. *See Hoffman-LaRoche Inc.*, 493 U.S. at 169. However, the majority of courts in this Circuit “have adopted a two-step approach for determining whether a class is similarly situated.” *Harris*, 716 F. Supp. 2d at 837 (quoting *Murillo*, 266 F.R.D. at 470-71); *see also Zaborowski v. MHN Gov’t Servs.*, No. C 12-05109, 2013 WL 1787154, at \*1 (N.D. Cal. Apr. 25, 2013); *Adams v. Inter-Con Sec. Sys. Inc.*, 242 F.R.D. 530, 536 (N.D. Cal. 2007); *Wynn v. Nat’l Broad. Co., Inc.*, 234 F. Supp. 2d

<sup>7</sup> *See also Does I thru XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1064 (9th Cir. 2000) (“Section 16(b) of FLSA authorizes an employee to bring an action on behalf of similarly situated employees, but requires that each employee opt-in to the suit by filing a consent to sue with the district court.”) *Harris v. Vector Mktg. Corp.*, 716 F. Supp. 2d 835, 837 (N.D. Cal. 2010); *Murillo v. Pac. Gas & Elec. Co.*, 266 F.R.D. 468, 470 (E.D. Cal. 2010); *Vasquez v. Coast Valley Roofing, Inc.*, 670 F.Supp.2d 1114, 1123-24 (E.D. Cal. 2009).

<sup>8</sup> *See also Bureerong v. Uvawas*, 922 F. Supp. 1450, 1466 (C.D. Cal. 1996) (noting that “[b]ecause the FLSA is a remedial statute, it should be construed ‘in order to further Congress’ goal of providing broad federal employment protection’” (quoting *Abshire v. County of Kern*, 908 F.2d 483, 485 (9th Cir. 1990), *cert. denied*, 498 U.S. 1068 (1991))).

1 1067, 1082 (C.D. Cal. 2002).

2 In the first stage, the determination of whether the putative class members will be similarly  
 3 situated “is made using a fairly lenient standard, and typically results in ‘conditional certification’ of a  
 4 representative class.” *Murillo*, 266 F.R.D. at 470-471 (quoting *Mooney v. Aramco Servs.*, 54 F.3d  
 5 1207, 1214 (5th Cir. 1995)); *see also Helton v. Factor 5, Inc.*, No. C 10-04927, 2012 WL 2428219, at  
 6 \*4 (N.D. Cal. June 26, 2012); *Lewis v. Wells Fargo & Co.*, 669 F. Supp. 2d 1124, 1128 (N.D. Cal.  
 7 2009). “The second-step usually occurs after discovery is complete, at which time the defendants may  
 move to decertify the class.” *Murillo*, 266 F.R.D. at 471.

8 As part of the first stage, courts have held that conditional certification only requires that  
 9 plaintiffs make substantial allegations that the putative collective action members were subject to a  
 10 single illegal policy, plan or decision. *In re Wells Fargo Home Mortg. Overtime Pay Litig.*, 527 F.  
 11 Supp. 2d 1053, 1071 (N.D. Cal. 2007); *Harris*, 716 F. Supp. 2d at 837.. “The standard for certification  
 12 at this [first] stage is a lenient one that typically results in certification.” *Russell v. Wells Fargo & Co.*,  
 13 No. C 07-3993 CW, 2008 WL 4104212, at \*2 (N.D. Cal. Sept. 3, 2008) (citing *Wynn v. Nat’l Broad.*  
 14 *Co. Inc.*, 234 F. Supp. 2d 1067, 1082 (C.D. Cal. 2002)). Courts, thus, consider any evidence available  
 15 before them, including plaintiffs’ declarations and any of defendant’s policies or documents. *See*  
 16 *Helton*, 2012 WL 2428219, at \*4 (noting that “at the first tier” of the analysis, courts usually rely only  
 17 on the pleadings and any declarations that have been submitted); *Shaia v. Harvest Mgmt. Sub LLC*, 306  
 18 F.R.D. 268, 275 (N.D. Cal. 2015) (applying the relaxed evidentiary rules to the first stage of 216(b)  
 19 certification by granting conditional certification based on two declarations and uniform job  
 20 descriptions to support claim of unpaid overtime); *Gilbert*, 2009 WL 424320, at \*2 (granting  
 21 conditional certification based on declarations from plaintiff and four other individuals); *Escobar v.*  
 22 *Whiteside Constr. Corp.*, No. C 08-01120, 2008 WL 3915715, at \*3-\*5 (N.D. Cal. Aug. 21, 2008)  
 23 (granting conditional certification based on declarations from three plaintiffs); *Adams*, 242 F.R.D. at  
 24 538; *Aguayo v. Oldenkamp Trucking*, No. 04-6279, 2005 WL 2436477, at \*4 (E.D. Cal. Oct. 3, 2005)  
 25 (disregarding hearsay and foundational challenges to declarations submitted in support of motion for  
 26 conditional certification); *Leuthold*, 224 F.R.D. at 468-469 (granting conditional certification based on  
 27 declarations from three proposed lead plaintiffs); *Ballaris v. Wacker Silttronic Corp.*, No. 00-1627,  
 28 2001 WL 1335809, at \*2-\*3 (D. Or. Aug. 24, 2001) (granting motion for conditional certification on  
 basis of two declarations). “Many courts have indicated that a plaintiff must simply show that ‘there  
 is some factual basis beyond the mere averments in their complaint for the class allegations.’” *Wren v.*  
*RGIS Inventory Specialists*, 2007 WL 4532218, at \*5 (N.D. Cal. Dec. 19, 2007). In fact, courts need

1 not consider evidence provided by defendants. *Ramirez*, 941 F.Supp.2d at 1203.

2  
3 **C. This Case Should Be Conditionally Certified Because Plaintiffs Have Made**  
4 **Substantial Allegations to Justify Court-Facilitated Notice to the Putative**  
5 **Opt-ins**

6 Plaintiffs satisfy their minimal burden at this initial stage to show common allegations that they  
7 and the other Judges have not been paid all wages owed for work performed on behalf of Wizards as a  
8 result of its policies and practices of treating Judges as volunteers and not employees. Even with  
9 minimal discovery, Plaintiffs' allegations and declarations demonstrate that Wizard's Judge program is  
10 coordinated and administered by Defendant and that Judges are Wizards' representatives to players,  
11 tournament operators, and others, and perform labor without which Wizards could not operate Magic  
12 events – the driving force behind its product sales. Judges are highly regulated by Wizards in that they  
13 are subject to the same rigorous training and certification requirements set by Wizards, share similar  
14 job duties and responsibilities, abide by the same uniform policy, are subject to similar compensation  
15 and expense reimbursement policies, are subject to common policies regarding discipline and  
16 termination, are required to abide by the same code of conduct, and are under Wizards control even  
17 when not working. Because Wizards' decision to misclassify judges as volunteers gives rise to the  
18 same FLSA violations for all putative opt-ins, this case is well-suited for conditional certification and  
19 court-facilitated notice.

20 **D. Courts Have Conditionally Certified Similar Volunteer Cases**

21 Several courts have granted conditional certification of collective actions raising similar FLSA  
22 claims on behalf of volunteers. *See, e.g., Reab v. Elec. Arts, Inc.*, 214 F.R.D. 623, 628 (D. Colo. 2002)  
23 (granting conditional certification under Section 216(b) based on the plaintiffs' uniform allegations  
24 that they and the putative class members were employees as opposed to volunteers and received  
25 compensation below minimum wage or no compensation from defendants for the work, labor and  
26 services they performed); *Hallisey v. Am. Online, Inc.*, No. 99-CIV-3785 (KTD), 2008 WL 465112, at  
27 \*2 (S.D.N.Y. Feb. 19, 2008) (granting Section 216(b) conditional certification because plaintiffs there  
28 were similarly situated with respect to their allegations that the FLSA had been violated by their  
misclassification as volunteers).

In *Reab v. Elec. Arts, Inc.*, the court granted conditional certification where the plaintiffs raised  
the common allegation that their classification as volunteers violated the FLSA. 214 F.R.D. at 629.

1 There, the plaintiffs and putative opt-ins consisted of players of the defendant's online multiplayer role  
 2 playing game who performed customer-service oriented duties on behalf of the defendant, such as  
 3 answering questions from other players of the game and otherwise assisting others in playing the game,  
 4 but were uniformly treated as "volunteers." *Id.* at 625-626. The *Reab* court concluded that the  
 5 plaintiffs were similarly situated because they raised substantial allegations that they were the victims  
 6 of a single plan of the defendant – namely its plan to treat them as volunteers and its blanket refusal to  
 pay them minimum wage for work performed. *Id.* at 628-29.

7 Like in *Reab*, Wizards recruits Judges from among its customer base and seeks to use their  
 8 unpaid labor to benefit its for-profit private business. As victims of a single plan, Plaintiffs and the  
 9 putative opt-ins a similarly situated to warrant conditional certification. *See Hallissey*, 2008 WL  
 10 465112, at \*2 ("the fundamental allegation found in Plaintiffs' declarations and pleadings that CLs  
 11 were denied minimum and overtime wages because of their classification by AOL as 'volunteers' in  
 12 the CL program is common to all of the CLs."). Conditional certification is also consistent with the  
 13 Department of Labor's long-standing enforcement position that a private employer's uniform  
 14 misclassification of employees as volunteers constitutes a clear violation of the FLSA. *See* DOL,  
 15 elaws regarding Volunteers, <http://webapps.dol.gov/elaws/whd/flsa/docs/volunteers.asp> ("Under the  
 FLSA, employees may not volunteer services to **for-profit** private sector employers").

#### 16 **E. Notice is Appropriate and Necessary to Protect Collective Members' Rights**

17 The requirement that employees affirmatively consent to join a collective action under the  
 18 FLSA makes the benefits of the statute's protections dependent upon "employees receiving accurate  
 19 and timely notice concerning the pendency of the collective action, so that they can make informed  
 20 decisions about whether to participate." *Hoffman-LaRoche Inc.*, 493 U.S. at 170.<sup>9</sup>

21 Consistent with the Supreme Court's directives in *Hoffman-LaRoche Inc.*, Plaintiffs respectfully seek  
 22 this Court's approval to send notice to the prospective FLSA opt-in plaintiffs. Plaintiffs have prepared  
 23 the attached proposed form of Notice to the putative class, which provides accurate information

24 <sup>9</sup> *See also Bonner v. SFO Shuttle Bus Co.*, 2013 WL 6139758, at \*5 (N.D. Cal. Nov. 21, 2013)  
 25 (approving plaintiffs' proposed notice in overtime case); *Gomez v. H & R Gunlund Ranches, Inc.*,  
 26 No. CV F 10-1163, 2010 WL 5232973, \*8 (E.D. Cal. 2010) (noting that "court authorization and  
 27 facilitation of the notice process of such actions, under certain circumstances, is proper, 'if not  
 28 necessary.'") (quoting *Hoffman-LaRoche Inc.*, 493 U.S. 165); *Lewis*, 669 F. Supp. 2d at 1128-1129  
 (same).

1 regarding the claims and the putative class members' rights to opt in pursuant to 29 U.S.C. § 216(b).<sup>10</sup>  
 2 Cornell Decl. Ex. S. The proposed Notice is clear with respect to the Court's approval and facilitation  
 3 only of the notice of the claims, emphasizing that the Court takes no position on Plaintiffs' claims or  
 4 Defendant's defenses. Nor does the Notice purport to suggest that the Court is encouraging or  
 5 advocating in favor of class members' joinder as plaintiffs in the action. In addition, the proposed  
 6 Notice provides an appropriate seventy-five (75) day opt-in period, which is presumptively standard in  
 7 this Court,<sup>11</sup> constitutes the best notice practicable by providing notice by email and U.S. mail,<sup>12</sup> and  
 8 promotes efficiency by authorizing the use of electronic signatures by the members of the Collective  
 9 when opting-in.

10 **F. Defendant Should be Compelled to Produce Contact Information for the**  
 11 **Putative Opt-Ins**

12 The district court in *Hoffman-LaRoche* correctly permitted the discovery of the names and addresses of  
 13 the affected employees without limitation. Indeed, the Supreme Court acknowledged that in order for  
 14 employees to take advantage of the benefits under § 216(b), they need to receive "accurate and timely  
 15 notice" regarding the pending collective action. *Adams*, 242 F.R.D. at 539 (quoting *Hoffman-*  
 16 *LaRoche*, 493 U.S. at 170). Plaintiffs are entitled to specific discovery to determine the names and  
 17 addresses of the putative class members. *See, e.g., Davis v. Soc. Serv. Coordinators, Inc.*, No. 1:10-  
 18 CV-02372, 2012 WL 5838825, at \*3 (E.D. Cal. Nov. 15, 2012); *Mitchell v. Acosta Sales, LLC*, 841 F.  
 19 Supp. 2d 1105, 1120 (C.D. Cal. 2011). Requiring Defendant to provide such information works no

19 <sup>10</sup> Also attached is a Proposed Consent form to be completed and returned by those individuals  
 20 wishing to opt in. The same shall be filed with the Court if the case is conditionally certified.

21 <sup>11</sup> *See, e.g., Sanchez v. Sephora USA, Inc.*, 2012 WL 2945753, at \*6 (N.D. Cal. 2012) (Armstrong, J.),  
 22 noting that "timeframes of sixty to ninety days appear to have become the presumptive standard in [the  
 Northern] District.").

23 <sup>12</sup> *In re Apple iPhone 4 Prods. Liab. Litig.*, 2012 U.S. Dist. LEXIS 113876, \*5 (N.D. Cal. Aug. 10,  
 24 2012) (email notice to 15.7 million persons and publication); *In re Netflix Privacy Litig.*, 2012, U.S.  
 25 Dist. LEXIS 93284, \*12-13 (N.D. Cal. Jul. 5, 2012); *Browning v. Yahoo! Inc.* 2006 WL 3826714, \*8  
 26 (N.D. Cal. December 27, 2006); *Otey v. Crowdfunder Inc.* 2013 WL 4552493, \*5 (N.D. Cal. Aug 27,  
 27 2013) (approving notice by email and online postings, as opposed to notice via U.S. mail); *Lewis v.*  
 28 *Wells Fargo* 669 F.Supp.2d 1124, 1128-29 (N.D. Cal. 2009) (requiring notice via email when "[t]he  
 potential class members, technical support workers, are likely to be particularly comfortable  
 communicating by email and thus this form of communication is just as, if not more, likely to  
 effectuate notice than first class mail").

hardship, as it maintains a centralized computer database, which would allow it to run queries narrowly tailored to retrieve specific data (e.g., name, last known address, email address, and phone number for Judges who worked a Wizards sanctioned event in the United States during the last three years)<sup>13</sup> and to generate reports. Turner Decl. ¶ 18[5:1-3]; Shaw Decl. ¶ 14 [4:13-15]; Stansfield Decl. ¶ 19 [5:7-9]; Golightly Decl. ¶ 17 [4:16-18]. Therefore, should this Court grant the present Motion, Plaintiffs respectfully request that this Court order Defendant to produce the information within fourteen (14) days of any such order.

#### IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court conditionally certify the collective action pursuant to 29 U.S.C. § 216(b), authorize notice as proposed by Plaintiffs, and order Defendant to produce the putative opt-in list within fourteen (14) days of its order of conditional certification.

Dated: June 14, 2017

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<sup>13</sup> The limitations period for a violation of the FLSA is generally two years, except when the employer's violation is proven to be willful, under which circumstances the statute of limitations is extended to three years. *See* 29 U.S.C. § 255(a). The courts, however, refrain from making determinations about willfulness at the conditional certification stage. *See Smith v. Bimbo Bakeries USA, Inc.*, No. CV 12-1689, 2013 WL 4479294, \*14 (C.D. Cal. Aug. 19, 2013) (holding that "[w]hile the Court agrees that plaintiffs have not yet shown willfulness, '[g]iven the lenient standard that Plaintiffs face at this stage and the difficulty of establishing, by affidavits, Defendant's willful behavior, the Court finds that . . . for the purpose of conditional certification, the three-year statute of limitations applie[s]'" (quoting *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D. 474, 484 (E.D. Cal. 2006))); *see also Gallagher v. Lackawanna County*, No. 3:CV-07-0912, 2008 WL 9375549, at \*9 (M.D. Pa. May 30, 2008) ("Whether Defendant['s] violations of the FLSA were willful is an issue going to the merits of the case and not whether notice should be issued to potential claimants." (quoting *Resendiz-Ramirez v. P&H Forestry, LLC*, 515 F. Supp. 2d 937, 942-943 (W.D. Ark. 2007))); *Neary v. Metro. Prop. & Cas. Ins. Co.*, 517 F. Supp. 2d 606, 623 (D. Conn. 2007) (allegations in the complaint of willful violation justified notice based on three-year statute of limitations).